



Sen. Pamela J. Althoff

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09700HB2558sam001

LRB097 07783 KMW 59046 a

1 AMENDMENT TO HOUSE BILL 2558

2 AMENDMENT NO. _____. Amend House Bill 2558 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) When a request is made to inspect or copy a public
9 record that contains information that is exempt from disclosure
10 under this Section, but also contains information that is not
11 exempt from disclosure, the public body may elect to redact the
12 information that is exempt. The public body shall make the
13 remaining information available for inspection and copying.
14 Subject to this requirement, the following shall be exempt from
15 inspection and copying:

16 (a) Information specifically prohibited from

1 disclosure by federal or State law or rules and regulations
2 implementing federal or State law.

3 (b) Private information, unless disclosure is required
4 by another provision of this Act, a State or federal law or
5 a court order.

6 (b-5) Files, documents, and other data or databases
7 maintained by one or more law enforcement agencies and
8 specifically designed to provide information to one or more
9 law enforcement agencies regarding the physical or mental
10 status of one or more individual subjects.

11 (c) Personal information contained within public
12 records, the disclosure of which would constitute a clearly
13 unwarranted invasion of personal privacy, unless the
14 disclosure is consented to in writing by the individual
15 subjects of the information. "Unwarranted invasion of
16 personal privacy" means the disclosure of information that
17 is highly personal or objectionable to a reasonable person
18 and in which the subject's right to privacy outweighs any
19 legitimate public interest in obtaining the information.
20 The disclosure of information that bears on the public
21 duties of public employees and officials shall not be
22 considered an invasion of personal privacy.

23 (d) Records in the possession of any public body
24 created in the course of administrative enforcement
25 proceedings, and any law enforcement or correctional
26 agency for law enforcement purposes, but only to the extent

1 that disclosure would:

2 (i) interfere with pending or actually and
3 reasonably contemplated law enforcement proceedings
4 conducted by any law enforcement or correctional
5 agency that is the recipient of the request;

6 (ii) interfere with active administrative
7 enforcement proceedings conducted by the public body
8 that is the recipient of the request;

9 (iii) create a substantial likelihood that a
10 person will be deprived of a fair trial or an impartial
11 hearing;

12 (iv) unavoidably disclose the identity of a
13 confidential source, confidential information
14 furnished only by the confidential source, or persons
15 who file complaints with or provide information to
16 administrative, investigative, law enforcement, or
17 penal agencies; except that the identities of
18 witnesses to traffic accidents, traffic accident
19 reports, and rescue reports shall be provided by
20 agencies of local government, except when disclosure
21 would interfere with an active criminal investigation
22 conducted by the agency that is the recipient of the
23 request;

24 (v) disclose unique or specialized investigative
25 techniques other than those generally used and known or
26 disclose internal documents of correctional agencies

1 related to detection, observation or investigation of
2 incidents of crime or misconduct, and disclosure would
3 result in demonstrable harm to the agency or public
4 body that is the recipient of the request;

5 (vi) endanger the life or physical safety of law
6 enforcement personnel or any other person; or

7 (vii) obstruct an ongoing criminal investigation
8 by the agency that is the recipient of the request.

9 (e) Records that relate to or affect the security of
10 correctional institutions and detention facilities.

11 (f) Preliminary drafts, notes, recommendations,
12 memoranda and other records in which opinions are
13 expressed, or policies or actions are formulated, except
14 that a specific record or relevant portion of a record
15 shall not be exempt when the record is publicly cited and
16 identified by the head of the public body. The exemption
17 provided in this paragraph (f) extends to all those records
18 of officers and agencies of the General Assembly that
19 pertain to the preparation of legislative documents.

20 (g) Trade secrets and commercial or financial
21 information obtained from a person or business where the
22 trade secrets or commercial or financial information are
23 furnished under a claim that they are proprietary,
24 privileged or confidential, and that disclosure of the
25 trade secrets or commercial or financial information would
26 cause competitive harm to the person or business, and only

1 insofar as the claim directly applies to the records
2 requested.

3 The information included under this exemption includes
4 all trade secrets and commercial or financial information
5 obtained by a public body, including a public pension fund,
6 from a private equity fund or a privately held company
7 within the investment portfolio of a private equity fund as
8 a result of either investing or evaluating a potential
9 investment of public funds in a private equity fund. The
10 exemption contained in this item does not apply to the
11 aggregate financial performance information of a private
12 equity fund, nor to the identity of the fund's managers or
13 general partners. The exemption contained in this item does
14 not apply to the identity of a privately held company
15 within the investment portfolio of a private equity fund,
16 unless the disclosure of the identity of a privately held
17 company may cause competitive harm.

18 Nothing contained in this paragraph (g) shall be
19 construed to prevent a person or business from consenting
20 to disclosure.

21 (h) Proposals and bids for any contract, grant, or
22 agreement, including information which if it were
23 disclosed would frustrate procurement or give an advantage
24 to any person proposing to enter into a contractor
25 agreement with the body, until an award or final selection
26 is made. Information prepared by or for the body in

1 preparation of a bid solicitation shall be exempt until an
2 award or final selection is made.

3 (i) Valuable formulae, computer geographic systems,
4 designs, drawings and research data obtained or produced by
5 any public body when disclosure could reasonably be
6 expected to produce private gain or public loss. The
7 exemption for "computer geographic systems" provided in
8 this paragraph (i) does not extend to requests made by news
9 media as defined in Section 2 of this Act when the
10 requested information is not otherwise exempt and the only
11 purpose of the request is to access and disseminate
12 information regarding the health, safety, welfare, or
13 legal rights of the general public.

14 (j) The following information pertaining to
15 educational matters:

16 (i) test questions, scoring keys and other
17 examination data used to administer an academic
18 examination;

19 (ii) information received by a primary or
20 secondary school, college, or university under its
21 procedures for the evaluation of faculty members by
22 their academic peers;

23 (iii) information concerning a school or
24 university's adjudication of student disciplinary
25 cases, but only to the extent that disclosure would
26 unavoidably reveal the identity of the student; and

1 (iv) course materials or research materials used
2 by faculty members.

3 (k) Architects' plans, engineers' technical
4 submissions, and other construction related technical
5 documents for projects not constructed or developed in
6 whole or in part with public funds and the same for
7 projects constructed or developed with public funds,
8 including but not limited to power generating and
9 distribution stations and other transmission and
10 distribution facilities, water treatment facilities,
11 airport facilities, sport stadiums, convention centers,
12 and all government owned, operated, or occupied buildings,
13 but only to the extent that disclosure would compromise
14 security.

15 (1) Minutes of meetings of public bodies closed to the
16 public as provided in the Open Meetings Act until the
17 public body makes the minutes available to the public under
18 Section 2.06 of the Open Meetings Act.

19 (m) Communications between a public body and an
20 attorney or auditor representing the public body that would
21 not be subject to discovery in litigation, and materials
22 prepared or compiled by or for a public body in
23 anticipation of a criminal, civil or administrative
24 proceeding upon the request of an attorney advising the
25 public body, and materials prepared or compiled with
26 respect to internal audits of public bodies.

1 (n) Records relating to a public body's adjudication of
2 employee grievances or disciplinary cases; however, this
3 exemption shall not extend to the final outcome of cases in
4 which discipline is imposed.

5 (o) Administrative or technical information associated
6 with automated data processing operations, including but
7 not limited to software, operating protocols, computer
8 program abstracts, file layouts, source listings, object
9 modules, load modules, user guides, documentation
10 pertaining to all logical and physical design of
11 computerized systems, employee manuals, and any other
12 information that, if disclosed, would jeopardize the
13 security of the system or its data or the security of
14 materials exempt under this Section.

15 (p) Records relating to collective negotiating matters
16 between public bodies and their employees or
17 representatives, except that any final contract or
18 agreement shall be subject to inspection and copying.

19 (q) Test questions, scoring keys, and other
20 examination data used to determine the qualifications of an
21 applicant for a license or employment.

22 (r) The records, documents, and information relating
23 to real estate purchase negotiations until those
24 negotiations have been completed or otherwise terminated.
25 With regard to a parcel involved in a pending or actually
26 and reasonably contemplated eminent domain proceeding

1 under the Eminent Domain Act, records, documents and
2 information relating to that parcel shall be exempt except
3 as may be allowed under discovery rules adopted by the
4 Illinois Supreme Court. The records, documents and
5 information relating to a real estate sale shall be exempt
6 until a sale is consummated.

7 (s) Any and all proprietary information and records
8 related to the operation of an intergovernmental risk
9 management association or self-insurance pool or jointly
10 self-administered health and accident cooperative or pool.
11 Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

15 (t) Information contained in or related to
16 examination, operating, or condition reports prepared by,
17 on behalf of, or for the use of a public body responsible
18 for the regulation or supervision of financial
19 institutions or insurance companies, unless disclosure is
20 otherwise required by State law.

21 (u) Information that would disclose or might lead to
22 the disclosure of secret or confidential information,
23 codes, algorithms, programs, or private keys intended to be
24 used to create electronic or digital signatures under the
25 Electronic Commerce Security Act.

26 (v) Vulnerability assessments, security measures, and

1 response policies or plans that are designed to identify,
2 prevent, or respond to potential attacks upon a community's
3 population or systems, facilities, or installations, the
4 destruction or contamination of which would constitute a
5 clear and present danger to the health or safety of the
6 community, but only to the extent that disclosure could
7 reasonably be expected to jeopardize the effectiveness of
8 the measures or the safety of the personnel who implement
9 them or the public. Information exempt under this item may
10 include such things as details pertaining to the
11 mobilization or deployment of personnel or equipment, to
12 the operation of communication systems or protocols, or to
13 tactical operations.

14 (w) (Blank).

15 (x) Maps and other records regarding the location or
16 security of generation, transmission, distribution,
17 storage, gathering, treatment, or switching facilities
18 owned by a utility, by a power generator, or by the
19 Illinois Power Agency.

20 (y) Information contained in or related to proposals,
21 bids, or negotiations related to electric power
22 procurement under Section 1-75 of the Illinois Power Agency
23 Act and Section 16-111.5 of the Public Utilities Act that
24 is determined to be confidential and proprietary by the
25 Illinois Power Agency or by the Illinois Commerce
26 Commission.

1 (z) Information about students exempted from
2 disclosure under Sections 10-20.38 or 34-18.29 of the
3 School Code, and information about undergraduate students
4 enrolled at an institution of higher education exempted
5 from disclosure under Section 25 of the Illinois Credit
6 Card Marketing Act of 2009.

7 (aa) Information the disclosure of which is exempted
8 under the Viatical Settlements Act of 2009.

9 (bb) Records and information provided to a mortality
10 review team and records maintained by a mortality review
11 team appointed under the Department of Juvenile Justice
12 Mortality Review Team Act.

13 (cc) Information regarding interments, entombments, or
14 inurnments of human remains that are submitted to the
15 Cemetery Oversight Database under the Cemetery Care Act or
16 the Cemetery Oversight Act, whichever is applicable.

17 (dd) Correspondence and records (i) that may not be
18 disclosed under Section 11-9 of the Public Aid Code or (ii)
19 that pertain to appeals under Section 11-8 of the Public
20 Aid Code.

21 ~~(dd)~~ (ee) The names, addresses, or other personal
22 information of persons who are minors and are also
23 participants and registrants in programs of park
24 districts, forest preserve districts, conservation
25 districts, recreation agencies, and special recreation
26 associations.

1 (ff) ~~(ee)~~ The names, addresses, or other personal
2 information of participants and registrants in programs of
3 park districts, forest preserve districts, conservation
4 districts, recreation agencies, and special recreation
5 associations where such programs are targeted primarily to
6 minors.

7 (gg) Matters under seal pursuant to subsection (f) of
8 Section 3-9008 of the Counties Code.

9 (2) A public record that is not in the possession of a
10 public body but is in the possession of a party with whom the
11 agency has contracted to perform a governmental function on
12 behalf of the public body, and that directly relates to the
13 governmental function and is not otherwise exempt under this
14 Act, shall be considered a public record of the public body,
15 for purposes of this Act.

16 (3) This Section does not authorize withholding of
17 information or limit the availability of records to the public,
18 except as stated in this Section or otherwise provided in this
19 Act.

20 (Source: P.A. 96-261, eff. 1-1-10; 96-328, eff. 8-11-09;
21 96-542, eff. 1-1-10; 96-558, eff. 1-1-10; 96-736, eff. 7-1-10;
22 96-863, eff. 3-1-10; 96-1378, eff. 7-29-10; 97-333, eff.
23 8-12-11; 97-385, eff. 8-15-11; 97-452, eff. 8-19-11; revised
24 9-2-11.)

25 Section 10. The Counties Code is amended by changing

1 Section 3-9008 as follows:

2 (55 ILCS 5/3-9008) (from Ch. 34, par. 3-9008)

3 Sec. 3-9008. Appointment of attorney to perform duties of
4 the State's attorney.

5 (a) Appointment of attorney to perform duties. Upon the
6 filing of a verified petition alleging that a State's Attorney
7 is unable to perform at least one of the duties of his or her
8 office either by an officer of the court or by any resident of
9 a county where the State's Attorney serves, the court shall
10 determine whether there are sufficient facts that justify the
11 appointment of a competent attorney or attorneys to serve as
12 special prosecutors to perform those duties of the State's
13 Attorney. Upon notice to the State's Attorney and an
14 opportunity to be heard, the court may rule either based upon
15 the pleadings or by conducting a hearing. If the court
16 determines by clear and convincing evidence that the State's
17 Attorney is unable to perform at least one of the duties of his
18 or her office, the court shall appoint a special prosecutor or
19 prosecutors and define the scope and duration of their
20 appointment. A verified pleading filed by the State's Attorney
21 agreeing to the appointment of a special prosecutor shall be
22 sufficient evidence as to the necessity for the appointment of
23 a special prosecutor or prosecutors.

24 (b) In appointing a special prosecutor or prosecutors based
25 upon a petition alleging an inability of the State's Attorney

1 to perform his or her duties as to particular matters because
2 he or she has a conflict of interest, either actual or by
3 appearance, the court shall give preference to attorneys of any
4 existing State or local prosecutorial agencies that are willing
5 and able to serve as appointed special prosecutors, without
6 additional compensation, except as to expenses and experts, and
7 shall appoint such an attorney unless the court makes a
8 specific finding that no such attorney is available or that the
9 interests of justice clearly necessitate the appointment of a
10 special prosecutor unconnected with an existing prosecutorial
11 agency. Upon such a finding, the court may appoint other
12 private counsel as it deems necessary, subject to the
13 provisions of subsection (d) of this Section.

14 (c) In appointing a special prosecutor or prosecutors based
15 upon a petition alleging a declared vacancy in office or an
16 inability of the State's Attorney to perform his or her duties
17 generally due to an absence from the county or because he or
18 she is otherwise unavailable for an extended period of time, or
19 because the State's Attorney is suffering from a physical,
20 mental, or legal disability that impairs his or her ability to
21 substantially perform his or her duties, the court may appoint
22 a special prosecutor or prosecutors who shall be authorized to
23 act as the State's Attorney until (i) the elected State's
24 Attorney files a petition alleging that the circumstances
25 justifying the order of appointment of a special prosecutor
26 have abated or (ii) a vacancy is declared in the office of

1 State's Attorney and subsequently filled in accordance with the
2 provisions of the Election Code. Upon a determination of the
3 court that the allegations contained with the provisions of the
4 State's Attorney's petition are proven by a preponderance of
5 the evidence or that the vacancy has been filled in accordance
6 with the Election Code, the court shall issue an order
7 terminating the appointment of the special prosecutor or
8 prosecutors and re-authorizing the State's Attorney to resume
9 his or her duties.

10 (d) Representation budgets. When the court appoints
11 counsel as provided in subsection (b) of this Section other
12 than an appointment of an attorney from an existing State or
13 local prosecutorial agency, it shall require the special
14 prosecutor, after he or she has had adequate time to review the
15 scope of his or her appointment and prior to initiating
16 representation, to submit a proposed estimated budget for court
17 approval, that will be subject to modification in light of
18 facts that emerge as the case proceeds. The budget shall be
19 submitted ex parte and filed and maintained under seal in order
20 to protect the interests of the State. Petitions for
21 compensation of the special prosecutors shall be as provided
22 under subsection (e) of this Section. An order of the court
23 regarding a proposed budget shall be a final and appealable
24 order.

25 The budget shall be incorporated into a sealed initial
26 pretrial order that reflects the understandings of the court

1 and special prosecutor regarding all matters affecting the
2 special prosecutor's compensation and reimbursement and
3 payments for investigative, expert, and other services,
4 including but not limited to, the following matters:

5 (1) the hourly rate at which the special prosecutor
6 will be compensated;

7 (2) the hourly rate and anticipated time that private
8 investigators, experts, and other support staff, including
9 any potential subcontractors, will be contracted, other
10 than investigators and experts employed by law enforcement
11 or other agencies of government; along with an explanation
12 as to why the use of existing law enforcement agencies is
13 not adequate; and

14 (3) the best preliminary estimate that can be made of
15 the cost of all services, including but not limited to,
16 attorneys, experts, support staff, and investigative
17 services that are likely to be needed through the
18 completion of the representation; the court shall have
19 discretion to require that budgets be prepared for shorter
20 intervals of time.

21 Attorneys appointed under this Section may obtain, subject
22 to later review, investigative, expert, or other services
23 without prior authorization if necessary for adequate
24 representation. If those services are obtained, the presiding
25 judge or the presiding judge's designee shall consider in a
26 closed ex parte proceeding that timely procurement of necessary

1 services could not await prior authorization. If an ex parte
2 hearing is requested by the special prosecutor or deemed
3 necessary by the judge prior to modifying a budget, an ex parte
4 hearing shall be held. The judge may then approve payment as if
5 previously budgeted. If the judge finds that the services could
6 have been reasonably provided by existing law enforcement
7 agencies or were not otherwise reasonable, payment shall be
8 reduced or denied.

9 An approved budget shall guide the special prosecutor's use
10 of time and resources by indicating the services for which
11 compensation is authorized. The representation budget shall be
12 re-evaluated when justified by changed or unexpected
13 circumstances and shall be modified by the court when
14 reasonable and necessary for an adequate representation. If a
15 closed ex parte hearing is requested by the special prosecutor
16 or deemed necessary by the appointing judge prior to modifying
17 a budget, the ex parte hearing shall be held before the
18 appointing judge.

19 Special prosecutors may periodically during the course of
20 representation petition the Court for payment of reasonable and
21 necessary expenses including, but not limited to, travel,
22 support staff, copying, investigatory and other assistance,
23 expert, forensic, and other witnesses. The Court shall not
24 authorize payment of bills that are not properly itemized.
25 Travel expenses must be paid at the rate as established by the
26 county or by rules promulgated by the Central Management

1 Services for those expenses, whichever is less, for the date
2 and location in which they were incurred, unless extraordinary
3 reasons are shown for the difference. If the expenses are in
4 excess of the promulgated rate or in excess of the budgeted
5 amounts, the court must make a specific finding that the
6 expenses were reasonable and necessary to the representation.

7 The court shall issue a written order approving the
8 petition for payment or with written objections under seal. The
9 petitioner has 7 days from his or her receipt of the objections
10 by the court to file a sealed response. With or without a
11 closed ex parte hearing, the court must promptly rule on the
12 objections. An order of the court regarding a petition for
13 certification of expenses shall be a final and appealable
14 order.

15 (e) Compensation of special prosecutors. Special
16 prosecutors appointed under the provisions of subsection (b) of
17 this Section shall be compensated upon presentment and written
18 certification by the court of a claim for payment for services,
19 detailing the date, activity, and time duration for which
20 compensation is sought. Compensation for special prosecutors
21 shall be consistent with the approved representation budget and
22 may be paid at a reasonable rate not to exceed \$165 per hour.

23 Special prosecutors appointed under the provisions of
24 subsection (c) of this Section shall be compensated upon
25 presentment to and certification by the court of a claim for
26 services detailing the date, activities, and time duration for

1 which compensation is sought. Upon appointment, the court shall
2 determine the hourly rate of compensation applicable to the
3 appointment. In determining the hourly rate, the court shall
4 consider the annual salary for a sworn State's Attorney in the
5 county and divide that sum by the number of hours regularly
6 worked within the county during the usual pay period. However,
7 in no event shall the compensation for a special prosecutor
8 exceed one-twelfth of the annual salary of the State's Attorney
9 in the county within any calendar month. Subject to other
10 provisions of law, all compensation due and owing to the sworn
11 State's Attorney shall be tolled pending the issuance of a
12 subsequent court order re-authorizing the sworn State's
13 Attorney to resume his or her duties. A request for payment
14 shall be presented under the provisions of subsection (f).

15 (f) Hearings. All hearings on establishment and
16 modification of a proposed budget, payment of expenses, or
17 compensation shall be closed and except as provided herein,
18 conducted ex parte, with a court reporter present.

19 The county may petition the court for appointment of a
20 legal representative solely on the issue of protecting the
21 county's financial interests. Unless the court determines that
22 good cause exists to deny the appointment, a legal
23 representative shall be appointed and have standing before the
24 court as to the adoption and modification of a proposed budget,
25 as well as payments either pursuant to the budget or otherwise.
26 If the court conducts an ex parte hearing, the county's legal

1 representative shall be permitted to notice and an opportunity
2 to be heard. In addition, the county shall be entitled to
3 appeal any final order of the court as to these matters.
4 Subject to court approval, the county's legal representative
5 shall not disclose the contents of any sealed document or
6 subject matter of any closed ex parte hearing.

7 All pleadings and attachments filed pursuant this
8 subsection shall be under seal. In exercising his or her rights
9 under this Section, the county's legal representative shall be
10 permitted to inspect any petitions or attachments filed by the
11 special prosecutor under seal and file objections under seal
12 thereto. Subject to court approval, the county's legal
13 representative may obtain a copy of petitions or attachments
14 filed by the special prosecutor. Matters submitted under seal
15 shall remain so, until the appointing court certifies that the
16 subject of the appointment has concluded. Matters under seal
17 are not subject to the Freedom of Information Act.

18 ~~Whenever the State's attorney is sick or absent, or unable to~~
19 ~~attend, or is interested in any cause or proceeding, civil or~~
20 ~~eriminal, which it is or may be his duty to prosecute or~~
21 ~~defend, the court in which said cause or proceeding is pending~~
22 ~~may appoint some competent attorney to prosecute or defend such~~
23 ~~cause or proceeding, and the attorney so appointed shall have~~
24 ~~the same power and authority in relation to such cause or~~
25 ~~proceeding as the State's attorney would have had if present~~
26 ~~and attending to the same, and in case of a vacancy of more~~

1 ~~than one year occurring in any county in the office of State's~~
2 ~~attorney, by death, resignation or otherwise, and it becomes~~
3 ~~necessary for the transaction of the public business, that some~~
4 ~~competent attorney act as State's attorney in and for such~~
5 ~~county during the period between the time of the occurrence of~~
6 ~~such vacancy and the election and qualification of a State's~~
7 ~~attorney, as provided by law, the vacancy shall be filled upon~~
8 ~~the written request of a majority of the circuit judges of the~~
9 ~~circuit in which is located the county where such vacancy~~
10 ~~exists, by appointment as provided in The Election Code of some~~
11 ~~competent attorney to perform and discharge all the duties of a~~
12 ~~State's attorney in the said county, such appointment and all~~
13 ~~authority thereunder to cease upon the election and~~
14 ~~qualification of a State's attorney, as provided by law. Any~~
15 ~~attorney appointed for any reason under this Section shall~~
16 ~~possess all the powers and discharge all the duties of a~~
17 ~~regularly elected State's attorney under the laws of the State~~
18 ~~to the extent necessary to fulfill the purpose of such~~
19 ~~appointment, and shall be paid by the county he serves not to~~
20 ~~exceed in any one period of 12 months, for the reasonable~~
21 ~~amount of time actually expended in carrying out the purpose of~~
22 ~~such appointment, the same compensation as provided by law for~~
23 ~~the State's attorney of the county, apportioned, in the case of~~
24 ~~lesser amounts of compensation, as to the time of service~~
25 ~~reasonably and actually expended.~~

26 (Source: P.A. 86-962.)".